IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 11864 of 2004(S)

OA.1322/1997 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

C.C.ANTONY, CHULLIYADAN HOUSE,
KODUMBASSERY, IRINJALAKUDA.

BY ADV. SRI.P.JACOB VARGHESE
SMT.V.A.GANGUJA
SRI.VIVEK VARGHESE P.J.

RESPONDENTS:
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1. **THE OFFICER COMMANDING, 752 T.P.T.COY.**
   ASC(CIV-GT) PUNE - 411 001.

2. **THE CONTROLLER OF DEFENCE ACCOUNTS,**
   (PENSION), DHOUPTHIIGHET,ALLEHANAD, UTTAR PRADESH.

3. **THE DIRECTOR GENERAL OF SUPPLIES &**
   TRANSPORT,ARMY HEAD QUARTERS, NEW DELHI.

4. **CONTROLLER OF DEFENCE ACCOUNTS,**
   SOUTHERN COMMAND, PUNE 411 001.

5. **UNION OF INDIA, REP. BY ITS SECRETARY,**
   MINISTRY OF DEFENCE, NEW DELHI.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
SRI.P.PARAMESWARAN NAIR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:-

P1: Copy of letter No.6592639/CC.A/Pen/ST-12 dtd.12.7.1997 issued by 1st respondent.

P2: Copy of representation dtd.20.9.1990 to the 2nd respondent by the petitioner.

P3: Copy of representation dtd.18.11.1991 by the petitioner to the 1st respondent.

P4: Copy of order in OA.No.1322/97 by the Central Administrative Tribunal, Ernakulam Bench.

P5: Copy of judgment in OP.No.27789/1999 of this Hon'ble Court.

P6: Copy of order dtd.20.1.2004 by the Central Administrative Tribunal, Ernakulam Bench in OA.No.1322/1997.

RESPONDENTS' EXHIBITS:- Nil.

(true copy)

P.S. TO JUDGE.

Kvs/-

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.11864 of 2004-S

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Dated this the 6th day of September, 2007

JUDGMENT

Balakrishnan Nair, J.

The petitioner was a civilian attached to the Indian Army. While working as a driver, he retired from service on superannuation, on 30.4.1986. His pay was revised as Rs.1380/- with effect from 1.1.1986 pursuant to the pay revision rules of 1986. His next increment was payable with effect from 1.10.1986. Since he retired on 30.4.1986, he could not draw that increment. One Mr. Kochukuttan was a junior of the petitioner. His pay was also fixed at Rs.1380/- with effect from 1.1.1986. His next increment was payable with effect from 1.2.1986. Going by the relevant rules concerning ante-dating of increment of senior to the same day, from which, the junior started drawing higher pay (second proviso to Rule 8 of CCS (Revised Pay) Rules, 1986), the petitioner was entitled to be paid one increment with effect from 1.2.1986. The same was not granted and he retired from service. Later, on finding that his junior Mr. Kochukuttan was drawing higher pay with effect from 1.2.1986, he filed a representation in 1991 before the competent authority which was followed by several

representations and O.A. No.1322/1997. The said Original Application was dismissed by the Central Administrative Tribunal, Ernakulam Bench by Ext.P4 order dated 2.3.1999. The said application was dismissed on the ground of delay on the part of the petitioner to approach the Tribunal. Though the petitioner contended that the cause of action in that case was a recurring one and therefore there is no delay, the Tribunal overruled the said contention and dismissed the application as barred by limitation. The petitioner challenged the said decision before this court by filing O.P. No.27789/1999. The Original Petition was allowed by Ext.P5 judgment dated 25.8.2003. This court specifically held that the petitioner's claim cannot be rejected on the ground of limitation. It was ordered to consider his claim on merits by the Tribunal. The relevant portion of the said judgment reads as follows:

> "The Tribunal rejected the application only because of the delay in filing of the representation. As held by the Supreme Court in **M.K.Gupta v. Union of India** (AIR 1996 SC 669) this is a recurring cause of action. Further, a retired employee will be able to find out the pension of his juniors subsequently after much search and if it was a mistake the department ought to have corrected it even before the petitioner applied for it and claim cannot be rejected merely on limitation. He has also filed representation from 1989 onwards. In any event, the claim of the employee has to be decided on merit by the Tribunal on the facts of the case. Whether he is entitled to more pension is a matter for the Tribunal to decide. We are not expressing any opinion regarding the merits of the case.

> Therefore, we set aside the impugned order of the Tribunal and remand the matter to the Tribunal for fresh adjudication. Since petitioner is a retired employee, the Tribunal shall dispose of the matter as expeditiously as possible, if possible, within six months from the date of receipt of a copy of this judgment."

Pursuant to the said judgment, the Tribunal reconsidered the matter and passed Ext.P6 order on 20.1.2004. Again the application was rejected on the ground of delay from the part of the petitioner to approach the Tribunal. The relevant portion of the said order reads as follows:

> "Before going into the merits of the case, we would like to make it clear that the issue involved in this case is not an issue of wrong fixation of pay which would give rise to a recurring cause of action, as has been held by the Apex Court in M.K.Gupta's case (supra). It has been held by the Apex Court that the grievance arising out of a wrong fixation of pay is a recurring cause of action, for, a fresh cause of action arises to an employee so long as he is in service, every month when he is paid less than what is due to him. If the case on hand had been a case of wrong fixation of pension, then again on the same analogy, every month the applicant gets a pension which is short of what should have been given to him he may get a fresh cause of action and thus the cause of action would have been a recurring one. But can it be said that this case is one of a wrong fixation of pension? Our answer to this question is in the negative. The applicant's pension at Rs.651/- per month was quantified basing the average emoluments drawn by him during the last 10 months of his service in accordance with the provisions contained in Rule 49 of the CCS (Pension) Rules. The applicant on the date of his superannuation was drawing a basic pay of Rs.1380/- admittedly and computation of pension at Rs.651/- was correct on that basis. It is true that the applicant was senior to Kochukuttan and that Kochukuttan has been drawing a higher amount of pension. The applicant's pay as on 1.1.1986 was fixed at Rs.1380/0 revising it from basic pay of Rs.420/- with his

> date of next stagnation increment due as on 1.10.1986 (the date being after retirement) and Sri Kochukuttan's pay was revised from Rs.420/- to 1380 with the date of his next stagnation increment due on 1.2.1986 (before retirement). Since the applicant retired on superannuation on 30.4.1986 before getting his pay raised to Rs.1410/- by award of an increment which would fall due only on 1.10.86, his pension was fixed reckoning his pay last drawn at Rs.1380 whereas Kochukuttan acquired increment on 1.2.86 raising his pay to Rs.1410 and his pension was worked out on the basis of the last pay drawn by him. In accordance with the provisions contained in second proviso to Rule 8 of CCS (Pension) Rules 1986, the applicant would have been entitled to have his date of increment advanced to 1.2.86 raising his pay to Rs.1410 on par with his junior. However, this did not happen as the applicant did not seek the stepping up of his pay on par with his junior, antedating his date of increment. Had it been done he would have been entitled to computation of pension at a higher amount taking into account the enhanced pay he would have received. Therefore, it cannot be seriously contended that the computation of the applicant's pension was erroneous because it was done strictly in accordance with the provisions of Rule 49 of CCS (Pension) Rules. The applicant having not sought and obtained antedating of his increment on par with Kochukuttan can have no subsisting grievance now. Since the fixation of the applicant's pension being strictly in accordance with the rules and cannot be faulted, the case on hand is not one of a wrong fixation of pension at all."

The Tribunal found that the petitioner was entitled to have his basic pay stepped up to Rs.1410/- with effect from 1.2.1986, as the same was the pay drawn by his junior from the said date. But he did not move or obtain antedating of his increment. If that was done, while making computation of pension, he would have received a higher amount. So, as the petitioner failed to do that, he is not entitled to any relief, it was held. In Ext.P5

judgment, this court held that the cause of action is a recurring one. In Ext.P6, the C.A.T. held that it is not a case of recurring cause of action. Even if the decision of the High Court is wrong, the Tribunal is bound to follow it. The parties thereto are bound by it. This writ petition is filed challenging Ext.P6. The petitioner submits that Ext.P6 runs counter to the direction contained in Ext.P5 judgment, wherein it was ordered to consider the claim of the petitioner on merits ignoring the delay.

2. We heard learned counsel for the respondents also. We notice that the following are the main prayers in the writ petition:

> "i) call for the records leading to Ext.P6 and quash the same by the writ of certiorari or such other writ or appropriate order;
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> ii) to direct that the petitioner be granted all the reliefs prayed for in the original application; and
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> iii) to issue such other writs, order or direction as this Hon'ble Court may deem fit."

The prayers in the Original Application were the following:-

> "i) to call for the records leading to Annexure A26 and to set aside the same;
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> ii) to issue appropriate direction or order directing the respondents to fix the last pay drawn by the applicant as that of his junior Sri S. Kochukuttan applying the second proviso to Rule 8 of the CCS (Revised Pay) Rules 1986 and fix his pension at Rs.680/- as was sanctioned to his junior the said Kochukuttan and also to grant the benefits of subsequent revisions of pension on that basis;

> iii) to issue appropriate direction or order directing the respondents to grant the applicant arrears of pension which would become due to him consequent on the refixation of pension to be made on granting relief No.(ii) with interest at 18& per annum."

The above prayers will show that he wanted stepping up of his last pay as equal to his junior, fix his pension correspondingly and grant him all subsequent revision of pension. Going by Ext.P6 judgment, we find that petitioner's claim has been rejected only based on a delay from his part to move and obtain stepping up of his pay. We feel that such an approach to the issue involved in this case is impermissible in view of Ext.P5 judgment. The Tribunal also accepted the right of the petitioner to have his pay stepped up with effect from 1.2.1986 but it was rejected only on the ground of laches from his part. In view of Ext.P5 judgment, the said stand of the Tribunal is untenable in law. It is declared so.

3. In the result, Ext.P6 is quashed. The order impugned in the Original Application (Annexure A26) is also quashed. Prayers 2 and 3 in the O.A. which are quoted above, are allowed. The respondents shall release consequential benefits due to the petitioner flowing from this judgment

within three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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